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August 11, 2011

### VIA E-FILING

Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings

AUG 11 2011

Part of  
Public Record

RE: *Stewartstown Railroad Company – Adverse Abandonment – In York County, PA,*  
STB Docket No. AB-1071

Dear Ms. Brown:

This responds to Preservation Pennsylvania's ("Preservation") letter filing (the "Letter") accepted by the Board's Office of Proceedings as filed in the above-referenced docket on August 8, 2011. In its Letter, Preservation expresses an interest in participating in this proceeding, particularly with respect to the proposed rail line abandonment's potential historic impact. Preservation also requests that the Board stay this proceeding for 180 days to allow it to "examine the historic significance of resources related to the Stewartstown right-of-way, including track materials and method of construction." As is discussed below, the Estate of George M. Hart (the "Estate" – the applicant in this proceeding) opposes Preservation's stay request.

Preservation wants more time to evaluate the possible historic significance of the subject rail line's right-of-way and track structure, and its stay request focuses upon the historic impact analysis undertaken by the Board's Office of Environmental Analysis ("OEA") in all rail line abandonment proceedings. Preservation takes no position on whether the facts and applicable agency law and policy warrant approval of the Estate's application – its stay request has nothing to do with whether or not the Board should permit the abandonment of the subject rail line. Most importantly, in its three-sentence request, Preservation does not identify, much less address, the Board's stay requirements. This is basis enough to deny Preservation's request for an injunctive remedy.<sup>1</sup>

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<sup>1</sup> See, e.g., BNSF Railway Company – Abandonment Exemption – In Rolette and Towner Counties, N.D., STB Docket No. AB-6 (Sub-No. 473X) slip op. at 1 (STB served Apr. 26, 2011) (party seeking via an untimely letter filing to a stay in a rail line abandonment proceeding "fail[ed] in its letter to mention, much less satisfy, any of the standards that a petitioner must meet in order for a stay to be granted . . . For that reason, even if this stay request had been timely, it would have been denied") (citing Washington Metro Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977)).

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In any event, Preservation offers no evidence or argument suggesting that OEA cannot or will not take appropriate steps to evaluate and address the abandonment's possible historic impacts in accordance with its obligations under Section 106 of the National Historic Preservation Act of 1966, as amended in 1980 and 1992. (As the Estate and the Board well know, the Section 106 process is often not completed in abandonment proceedings until after the Board has issued a decision on the merits of the abandonment request itself.) And Preservation does not argue that adherence to the Board's customary historic analysis would result in irreparable harm.

Preservation has not made a case for postponing a Board decision on the merits of the Estate's abandonment application, and its stay request must be denied. But the Estate does not object to Preservation's participation in the Board's environmental and historic impacts analysis process. We fully anticipate that OEA will take Preservation's input into account.

The Estate would add, however, that the Commonwealth of Pennsylvania's Bureau for Historic Preservation ("BHP" – the State Historic Preservation Office) already shared its views on the proposed abandonment with the Estate, which, in turn, forwarded BHP's input to OEA on May 27, 2011. BHP did not express concern about the disposition of the subject rail line's track materials. We would urge Preservation to coordinate with BHP in addressing any concerns over the proposed abandonment's possible historic impact and appropriate mitigation, if any.<sup>2</sup>

In short, Preservation has not identified, much less addressed, the Board's stay requirements, its request is not tied to the Board's merits analysis, and there is no indication that the Board cannot or will not take Preservation's input on historic impact into account in connection with the agency's customary Section 106 process. For all of these reasons, a stay is unwarranted, and the Board must deny Preservation's stay request.

If there are any questions about this filing, please contact me directly, either by telephone: 202-663-7824 or by e-mail: [rwimbish@bakerandmiller.com](mailto:rwimbish@bakerandmiller.com).

Respectfully submitted,



Robert A. Wimbish  
Attorney for the Estate of George M. Hart

cc: All parties of record

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<sup>2</sup> It might be helpful for Preservation to bear in mind that, as a matter of agency precedent (guided by Constitutional takings considerations), the Board will not prohibit the salvage of abandoned track and track material, although it could under appropriate circumstances require "documentary historic mitigation" as a mandatory prerequisite to track salvage.